Office-Supreme Court, U.S.
FILED
MAR 12 1966
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1047

EDWARD GOLDSTEIN,

Petitioner,

against

MAX DOFT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SAMUEL B. SEIDEL,
Attorney for Respondent,
230 Park Avenue,
New York, N. Y. 10017.

KURZMAN & FRANK, Esqs.,
Of Counsel.

ACKERMAN PRESS, Phones BO 9-7107-8

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1047

EDWARD GOLDSTEIN,

Petitioner,

against

MAX DOFT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

POINT I

The judgment of the Court of Appeals is in full conformity with the law of New York.

The District Judge, in his opinion, went into the applicable law of New York in great depth, and his judgment is well grounded on such law. The numerous cited New York decisions support his conclusions in every respect. (See, particularly, *Israel* v. *Wood Dolson Co.*, 1 N. Y. 2d 116, 151 N. Y. S. 2d 1; *Good Health Dairy Products Corp.* v. *Emery*, 275 N. Y. 14, 9 N. E. 2d 758.) The Court of Appeals affirmed on such opinion. (Petition, p. 10.)

Matter of Riverdale Fabrics Corp., 306 N. Y. 288, 118 N. E. 2d 104, relied upon by petitioner, was entirely dissimilar from the present action. The sole question there was whether the parties had made a binding contract to arbitrate certain disputes. In the instant case, not only was such a contract admittedly made, but petitioner was

the one who initiated the arbitration proceeding and submitted to the arbitrators the very claims which he later sought to re-litigate in the federal court action. The defense of *res judicata* was amply sustained under the New York cases as matter of law, as the District Judge held.

Since the courts below have faithfully followed and applied the law of the State, no question arises as to the applicability of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64; 58 S. Ct. 817.

POINT II

There is no basis, under the rules, for granting a writ of certiorari.

This application seems to be made under Rule 19 1 (b) on the ground that the Court of Appeals has "decided important state or territorial questions in a way in conflict with applicable state or territorial law".

The decision of the Court of Appeals in no way conflicts with applicable state law. Therefore it is unnecessary to determine whether petitioner's question of state law is "important", since it is actually non-existent. (Point I, *supra.*)

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated, New York, N. Y., March 7, 1966.

Respectfully submitted,

SAMUEL B. SEIDEL,
Attorney for Respondent,
230 Park Avenue,
New York, N. Y. 10017.

Of Counsel:

KURZMAN & FRANK, Esqs.